Annex C

## CASE SUMMARY

**Complaint against the Mass Transit Railway Corporation (MTRC) - unsatisfactory tendering method in arranging building insurance for a MTRC managed housing estate.**

### BACKGROUND

The complainant was a resident of a Mass Transit Railway Corporation (MTRC) managed housing estate who was dissatisfied with the arbitrary choice of tendering method used by MTRC in arranging building insurance coverage that in his opinion had led to excessive premium rates.

2. On behalf of the owners' committee(OC), he had challenged the MTRC in offering insurance policy renewal to the incumbent insurer without open tender and had only invited six major insurance firms to competitively tender for contract renewal, against the express wishes of the OC.

3. The complainant contended in particular -

(a) that MTRC renewed insurance arrangement with the incumbent insurer amidst unresolved controversy over the method of tendering, without communicating the decision in advance nor providing an acceptable explanation after the fact; and

(b) considering that three of the six invitees declined to tender whilst one other would participate in reinsurance only, and that the MTRC turned over millions annually in building insurance premium, the MTRC action was seen to be in breach of the relevant regulations in purpose and intent, contrary to the interests of the concerned owners, and in defiance of the principle of free market competition.

### FINDINGS AND CONCLUSION

4. This Office notes the Building Management Ordinance(BMO) refers to "invitation to tender" as the prescribed method for the procuring of supplies and services required by a corporation in the exercise of its powers and the performance of its duties under the deed of mutual covenant (the case of MTRC in this instance) where an expense threshold is breached. In the case under complaint, there was in

fact an exercise of invitation to tender. This Office therefore does not consider there had been any unresolved controversy over the method of tendering.

5. Upon investigation scant material evidence had been found in support of the contention that there had been no communication in advance of the decision to renew the existing policy although on a particular occasion, the specific officers to whom the OC's enquiries were addressed might not have been knowledgeable at a given time about the exact sequence of events leading to a final decision as they had not been the authorised personnel to execute the renewal. It would however be fair to state that there had been a concerted effort to establish the ground rules and decision criteria for the renewal. The choice of preferred insurer could well have become at some stage painfully evident to the OC members and subject only to confirmation.

6. In the course of the intermittent exchanges and discussions between the two parties over a protracted period it can be seen that ample explanations had been given by the MTRC but whether these had been acceptable to the OC can be subjective. In the circumstances it is difficult to see how these can become acceptable short of the MTRC yielding to OC demands, which this Office considers a matter of discretion properly within the scope of MTRC authority as property manager and where the OC is not a legally constituted body corporate. The complaint point referred to in para 3(a) is unsubstantiated.

7. This Office appreciates the concern over whether the conduct of tendering had indeed been fair, irrespective of any possible breach of due process, in view of the presumably very restrictive tender specification offered to an almost captive market which was seen to have effectively precluded in practice any contest by an alternative insurer to the incumbent, in what could arguably be an artificially engendered anti-competitive trade practice by a megacorporate with government backing. The practice of having a master policy to cover both owned and managed properties alike also warrants further attention. On the other hand, in the absence of any substantive evidence tending to show unfair or malpractice in restraint of trade, this Office is content to leave the issue to the appropriate trade practice regulator for further scrutiny if need be. It is further conceded that in this instance the tendering process would appear an exercise of commercial judgement more than an act of public administration and the complaint point referred to in para 3(b) is unsubstantiated.

8. Overall, the complaint is **unsubstantiated**.

**OTHER OBSERVATIONS**

9. In coming to the above conclusion, this Office is however mindful of the possibility that, inspite of the economy of scale that can be derived from pooling associated MTRC properties for a master programme, the practice could perchance be seen as compromising auditability and transparency resulting in lingering doubts, legitimate or unwarranted, about possibly selectively weighted premium rates amongst owned and managed properties. It may also prove difficult to objectively dispel such incredulity even if unfounded. This Office therefore suggests the MTRC eventually arrange to have separate insurance coverage for owned and managed properties in the housing estate concerned.

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